

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

WAYNE JOHN KELLY, M.D.

**Physician's and Surgeon's
Certificate No. C43073**

Respondent

Case No. 800-2014-002733

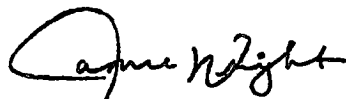
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 8, 2017.

IT IS SO ORDERED: October 9, 2017.

MEDICAL BOARD OF CALIFORNIA



**Jamie Wright, JD, Chair
Panel A**

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General
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Attorneys for Complainant

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**WAYNE KELLY, M.D.
33800 Pinewood Lane
Menifee, CA 92584**

**Physician's and Surgeon's Certificate No.
C43073**

Respondent.

Case No. 800-2014-002733

OAH No. 2017030653

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Martin W. Hagan, Deputy Attorney General.

2. Respondent Wayne Kelly, M.D. (Respondent) is represented in this proceeding by Mark P. Poliquin, Esq., of Poliquin & DeGrave LLP, whose address is 22972 Mill Creek Drive, Laguna Hills, CA 92653.

3. On or about February 1, 1993, the Board issued Physician's and Surgeon's Certificate No. C43073 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2014-002733, and will expire on February 28, 2019, unless renewed.

JURISDICTION

4. On or about November 7, 2016, Accusation No. 800-2014-002733 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 7, 2016. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 800-2014-002733 is attached as Exhibit A and incorporated herein by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2014-002733. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent agrees that, at an administrative hearing, complainant could establish a *prima facie* case with respect to the charges and allegations in Accusation No. 800-2014-002733, and that he has thereby subjected his Physician's and Surgeon's Certificate No. C43073 to

1 disciplinary action. Respondent further agrees to be bound by the Board's imposition of
2 discipline as set forth in the Disciplinary Order below.

3 9. Respondent further agrees that if he ever petitions for early termination or
4 modification of probation, or if an accusation and/or petition for revocation of probation is filed
5 against him before the Medical Board of California, all of the charges and allegations contained
6 in Accusation No. 800-2014-002733 shall be deemed true, correct and fully admitted by
7 Respondent for purposes of that proceeding or any other licensing proceeding involving
8 respondent in the State of California or elsewhere.

9 10. Respondent agrees that his Physician's and Surgeon's Certificate No. C43073 is
10 subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in
11 the Disciplinary Order below.

12 CONTINGENCY

13 11. This stipulation shall be subject to approval by the Medical Board of California.
14 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
15 Board of California may communicate directly with the Board regarding this stipulation and
16 settlement, without notice to or participation by Respondent or his counsel. By signing the
17 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
18 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
19 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
20 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
21 action between the parties, and the Board shall not be disqualified from further action by having
22 considered this matter.

23 12. The parties agree that this Stipulated Settlement and Disciplinary Order shall be
24 null and void and not binding upon the parties unless approved and adopted by the Board, except
25 for this paragraph, which shall remain in full force and effect. Respondent fully understands and
26 agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and
27 Disciplinary Order, the Board may receive oral and written communications from its staff and/or
28 the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify

1 the Board, any member thereof, and/or any other person from future participation in this or any
2 other matter affecting or involving respondent. In the event that the Board does not, in its
3 discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the
4 exception of this paragraph, it shall not become effective, shall be of no evidentiary value
5 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
6 hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order
7 be rejected for any reason by the Board, respondent will assert no claim that the Board, or any
8 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this
9 Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

10 **ADDITIONAL PROVISIONS**

11 13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to
12 be an integrated writing representing the complete, final and exclusive embodiment of the
13 agreements of the parties in the above-entitled matter.

14 14. The parties agree that copies of this Stipulated Settlement and Disciplinary Order,
15 including copies of the signatures of the parties, may be used in lieu of original documents and
16 signatures and, further, that such copies shall have the same force and effect as originals.

17 15. In consideration of the foregoing admissions and stipulations, the parties agree the
18 Board may, without further notice to or opportunity to be heard by respondent, issue and enter the
19 following Disciplinary Order:

20 **DISCIPLINARY ORDER**

21 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C43073 issued
22 to Respondent Wayne Kelly, M.D. is revoked. However, the revocation is stayed and Respondent
23 is placed on probation for five (5) years on the following terms and conditions.

24 1. **PRESCRIBING PRACTICES COURSE.** Within 60 calendar days of the effective
25 date of this Decision, Respondent shall enroll in a course in prescribing practices approved in
26 advance by the Board or its designee. Respondent shall provide the approved course provider
27 with any information and documents that the approved course provider may deem pertinent.
28 Respondent shall participate in and successfully complete the classroom component of the course

1 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
2 complete any other component of the course within one (1) year of enrollment. The prescribing
3 practices course shall be at Respondent's expense and shall be in addition to the Continuing
4 Medical Education (CME) requirements for renewal of licensure.

5 A prescribing practices course taken after the acts that gave rise to the charges in the
6 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
7 or its designee, be accepted towards the fulfillment of this condition if the course would have
8 been approved by the Board or its designee had the course been taken after the effective date of
9 this Decision. Respondent shall submit a certification of successful completion to the Board or its
10 designee not later than 15 calendar days after successfully completing the course, or not later than
11 15 calendar days after the effective date of the Decision, whichever is later.

12 2. **PROFESSIONALISM PROGRAM (ETHICS COURSE)**. Within 60 calendar
13 days of the effective date of this Decision, Respondent shall enroll in a professionalism program,
14 that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
15 Respondent shall participate in and successfully complete that program. Respondent shall
16 provide any information and documents that the program may deem pertinent. Respondent shall
17 successfully complete the classroom component of the program not later than six (6) months after
18 Respondent's initial enrollment, and the longitudinal component of the program not later than the
19 time specified by the program, but no later than one (1) year after attending the classroom
20 component. The professionalism program shall be at Respondent's expense and shall be in
21 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

22 A professionalism program taken after the acts that gave rise to the charges in the
23 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
24 or its designee, be accepted towards the fulfillment of this condition if the program would have
25 been approved by the Board or its designee had the program been taken after the effective date of
26 this Decision. Respondent shall submit a certification of successful completion to the Board or its
27 designee not later than 15 calendar days after successfully completing the program or not later
28 than 15 calendar days after the effective date of the Decision, whichever is later.

1 3. **CLINICAL COMPETENCE ASSESSMENT PROGRAM.** Within 60 calendar
2 days of the effective date of this Decision, Respondent shall enroll in a clinical competence
3 assessment program approved in advance by the Board or its designee. Respondent shall
4 successfully complete the program not later than six (6) months after Respondent's initial
5 enrollment unless the Board or its designee agrees in writing to an extension of that time.

6 The program shall consist of a comprehensive assessment of Respondent's physical and
7 mental health and the six general domains of clinical competence as defined by the Accreditation
8 Council on Graduate Medical Education and American Board of Medical Specialties pertaining to
9 Respondent's current or intended area of practice. The program shall take into account data
10 obtained from the pre-assessment, self-report forms and interview, and the Decision(s),
11 Accusation(s), and any other information that the Board or its designee deems relevant. The
12 program shall require Respondent's on-site participation for a minimum of three (3) and no more
13 than five (5) days as determined by the program for the assessment and clinical education
14 evaluation. Respondent shall pay all expenses associated with the clinical competence
15 assessment program.

16 At the end of the evaluation, the program will submit a report to the Board or its designee
17 which unequivocally states whether the Respondent has demonstrated the ability to practice
18 safely and independently. Based on Respondent's performance on the clinical competence
19 assessment, the program will advise the Board or its designee of its recommendation(s) for the
20 scope and length of any additional educational or clinical training, evaluation or treatment for any
21 medical condition or psychological condition, or anything else affecting Respondent's practice of
22 medicine. Respondent shall comply with the program's recommendations.

23 Determination as to whether Respondent successfully completed the clinical competence
24 assessment program is solely within the program's jurisdiction.

25 If Respondent fails to enroll, participate in, or successfully complete the clinical
26 competence assessment program within the designated time period, Respondent shall receive a
27 notification from the Board or its designee to cease the practice of medicine within three (3)
28 calendar days after being so notified. The Respondent shall not resume the practice of medicine

1 until enrollment or participation in the outstanding portions of the clinical competence assessment
2 program have been completed. If the Respondent did not successfully complete the clinical
3 competence assessment program, the Respondent shall not resume the practice of medicine until a
4 final decision has been rendered on the accusation and/or a petition to revoke probation. The
5 cessation of practice shall not apply to the reduction of the probationary time period.

6 4. **MONITORING - PRACTICE**. Within 30 calendar days of the effective date of this
7 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice
8 monitor, the name and qualifications of one or more licensed physicians and surgeons whose
9 licenses are valid and in good standing, and who are preferably American Board of Medical
10 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
11 relationship with Respondent, or other relationship that could reasonably be expected to
12 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
13 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
14 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

15 The Board or its designee shall provide the approved monitor with copies of the Decision
16 and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the
17 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
18 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
19 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
20 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
21 signed statement for approval by the Board or its designee.

22 Within 60 calendar days of the effective date of this Decision, and continuing throughout
23 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall
24 make all records available for immediate inspection and copying on the premises by the monitor
25 at all times during business hours and shall retain the records for the entire term of probation.

26 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
27 date of this Decision, Respondent shall receive a notification from the Board or its designee to
28 cease the practice of medicine within three (3) calendar days after being so notified. Respondent

1 shall cease the practice of medicine until a monitor is approved to provide monitoring
2 responsibility.

3 The monitor shall submit a quarterly written report to the Board or its designee which
4 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
5 are within the standards of practice of medicine, and whether Respondent is practicing medicine
6 safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure
7 that the monitor submits the quarterly written reports to the Board or its designee within 10
8 calendar days after the end of the preceding quarter.

9 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
10 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
11 name and qualifications of a replacement monitor who will be assuming that responsibility within
12 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
13 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
14 notification from the Board or its designee to cease the practice of medicine within three (3)
15 calendar days after being so notified. Respondent shall cease the practice of medicine until a
16 replacement monitor is approved and assumes monitoring responsibility.

17 In lieu of a monitor, Respondent may participate in a professional enhancement program
18 approved in advance by the Board or its designee that includes, at minimum, quarterly chart
19 review, semi-annual practice assessment, and semi-annual review of professional growth and
20 education. Respondent shall participate in the professional enhancement program at Respondent's
21 expense during the term of probation.

22 5. **PROHIBITED PRACTICE.** During probation, Respondent is prohibited from
23 directly or indirectly providing medical marijuana to any patients. After the effective date of this
24 Decision, all patients being treated by the Respondent shall be notified that the Respondent is
25 prohibited from directly or indirectly providing medical marijuana to any patients. Any new
26 patients must be provided this notification at the time of their initial appointment.

27 Respondent shall maintain a log of all patients to whom the required oral notification was
28 made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's

1 medical record number, if available; 3) the full name of the person making the notification; 4) the
2 date the notification was made; and 5) a description of the notification given. Respondent shall
3 keep this log in a separate file or ledger, in chronological order, shall make the log available for
4 immediate inspection and copying on the premises at all times during business hours by the Board
5 or its designee, and shall retain the log for the entire term of probation.

6 6. **NOTIFICATION.** Within seven (7) days of the effective date of this Decision, the
7 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
8 Chief Executive Officer at every hospital where privileges or membership are extended to
9 Respondent, at any other facility where Respondent engages in the practice of medicine,
10 including all physician and locum tenens registries or other similar agencies, and to the Chief
11 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
12 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
13 calendar days. This condition shall apply to any change(s) in hospitals, other facilities or
14 insurance carrier.

15 7. **SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED**
16 **PRACTICE NURSES.** During probation, Respondent is prohibited from supervising physician
17 assistants and advanced practice nurses.

18 8. **OBEY ALL LAWS.** Respondent shall obey all federal, state and local laws, all rules
19 governing the practice of medicine in California and remain in full compliance with any court
20 ordered criminal probation, payments, and other orders.

21 9. **QUARTERLY DECLARATIONS.** Respondent shall submit quarterly declarations
22 under penalty of perjury on forms provided by the Board, stating whether there has been
23 compliance with all the conditions of probation.

24 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
25 of the preceding quarter.

26 10. **GENERAL PROBATION REQUIREMENTS.**

27 **Compliance with Probation Unit.** Respondent shall comply with the Board's probation
28 unit.

1 **Address Changes.** Respondent shall, at all times, keep the Board informed of
2 Respondent's business and residence addresses, email address (if available), and telephone
3 number. Changes of such addresses shall be immediately communicated in writing to the Board
4 or its designee. Under no circumstances shall a post office box serve as an address of record,
5 except as allowed by Business and Professions Code section 2021(b).

6 **Place of Practice.** Respondent shall not engage in the practice of medicine in
7 Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility
8 or other similar licensed facility.

9 **License Renewal.** Respondent shall maintain a current and renewed California physician's
10 and surgeon's license.

11 **Travel or Residence Outside California.** Respondent shall immediately inform the Board
12 or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts,
13 or is contemplated to last, more than thirty (30) calendar days. In the event Respondent should
14 leave the State of California to reside or to practice, Respondent shall notify the Board or its
15 designee in writing 30 calendar days prior to the dates of departure and return.

16 11. **INTERVIEW WITH THE BOARD OR ITS DESIGNEE.** Respondent shall be
17 available in person upon request for interviews either at Respondent's place of business or at the
18 probation unit office, with or without prior notice throughout the term of probation.

19 12. **NON-PRACTICE WHILE ON PROBATION.** Respondent shall notify the Board
20 or its designee in writing within 15 calendar days of any periods of non-practice lasting more than
21 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
22 defined as any period of time Respondent is not practicing medicine as defined in Business and
23 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
24 patient care, clinical activity or teaching, or other activity as approved by the Board. If
25 Respondent resides in California and is considered to be in non-practice, Respondent shall
26 comply with all terms and conditions of probation. All time spent in an intensive training
27 program which has been approved by the Board or its designee shall not be considered non-
28 practice and does not relieve Respondent from complying with all the terms and conditions of

1 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
2 on probation with the medical licensing authority of that state or jurisdiction shall not be
3 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
4 period of non-practice.

5 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
6 months, Respondent shall successfully complete the Federation of State Medical Boards's Special
7 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
8 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
9 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.
10 Respondent's period of non-practice while on probation shall not exceed two (2) years. Periods
11 of non-practice will not apply to the reduction of the probationary term.

12 Periods of non-practice for a Respondent residing outside of California will relieve
13 Respondent of the responsibility to comply with the probationary terms and conditions with the
14 exception of this condition and the following terms and conditions of probation: Obey All Laws;
15 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
16 Controlled Substances; and Biological Fluid Testing.

17 13. **COMPLETION OF PROBATION.** Respondent shall comply with all financial
18 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
19 completion of probation. Upon successful completion of probation, Respondent's certificate shall
20 be fully restored.

21 14. **VIOLATION OF PROBATION.** Failure to fully comply with any term or
22 condition of probation is a violation of probation. If Respondent violates probation in any
23 respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke
24 probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to
25 Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation,
26 the Board shall have continuing jurisdiction until the matter is final, and the period of probation
27 shall be extended until the matter is final.

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15. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

16. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Mark P. Poliquin, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED:

8/11/17

WAYNE KELLY, M.D.
Respondent

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1 I have read and fully discussed with Respondent Wayne Kelly, M.D., the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.

3 I approve as to its form and content.

4 DATED August 11, 2017


MARK P. POLIQUIN, ESQ.
Attorney for Respondent

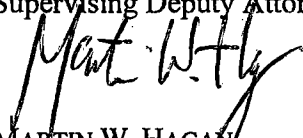
7 **ENDORSEMENT**

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
9 submitted for consideration by the Medical Board of California.

10 Dated: 8/11/2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General


MARTIN W. HAGAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2014-002733

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8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Nov. 7, 2016
DYE [Signature] ANALYST

10 BEFORE THE
11 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 800-2014-002733

14 Wayne Kelly, M.D.
33800 Pinewood Lane
15 Menifee, CA 92584

ACCUSATION

16 Physician's and Surgeon's Certificate
17 No. C43073,

18 Respondent.

19 Complainant alleges:

20 PARTIES

21 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer
23 Affairs (Board).

24 2. On or about February 1, 1993, the Medical Board issued Physician's and Surgeon's
25 Certificate No. C43073 to Wayne Kelly, M.D. (Respondent). The Physician's and Surgeon's
26 Certificate was in full force and effect at all times relevant to the charges brought herein and will
27 expire on February 28, 2017, unless renewed.

28 ////

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, be placed on probation and required to pay the costs of probation monitoring, be publicly reprimanded and ordered to complete relevant educational courses, or have such other action taken in relation to discipline as the Board or an administrative law judge deems proper.

5. Section 2234 of the Code, states:

“The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

“(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

“(b) Gross negligence.

“(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

“(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

“(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee’s conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

1 “(d) Incompetence.

2 “(e) The commission of any act involving dishonesty or corruption which is
3 substantially related to the qualifications, functions, or duties of a physician and
4 surgeon.

5 “(f) Any action or conduct which would have warranted the denial of a
6 certificate.

7 “....”

8 6. Unprofessional conduct under California Business and Professions Code
9 section 2234 is conduct which breaches the rules or ethical code of the medical
10 profession, or conduct which is unbecoming to a member in good standing of the
11 medical profession, and which demonstrates an unfitness to practice medicine.¹

12 7. Section 2261 of the Code states:

13 “Knowingly making or signing any certificate or other document directly or
14 indirectly related to the practice of medicine or podiatry which falsely represents
15 the existence or nonexistence of a state of facts, constitutes unprofessional
16 conduct.”

17 8. Section 2266 of the Code states:

18 “The failure of a physician and surgeon to maintain adequate and accurate
19 records relating to the provision of services to their patients constitutes
20 unprofessional conduct.”

21 9. Section 2290.5 of the Code states:

22 “(a) For purposes of this division, the following definitions shall apply:

23 “(1) ‘Asynchronous store and forward’ means the transmission of a
24 patient’s medical information from an originating site to the health care provider
25 at a distant site without the presence of the patient.

26 “(2) ‘Distant site’ means a site where a health care provider who

27
28 ¹ *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.

1 provides health care services is located while providing these services via a
2 telecommunications system.

3 “(3) ‘Health care provider’ means either of the following:

4 “(A) A person who is licensed under this division.

5 “(B) A marriage and family therapist intern or trainee functioning
6 pursuant to Section 4980.43.

7 “(4) ‘Originating site’ means a site where a patient is located at the time
8 health care services are provided via a telecommunications system or where
9 the asynchronous store and forward service originates.

10 “(5) ‘Synchronous interaction’ means a real-time interaction between a
11 patient and a health care provider located at a distant site.

12 “(6) ‘Telehealth’ means the mode of delivering health care services
13 and public health via information and communication technologies to facilitate
14 the diagnosis, consultation, treatment, education, care management, and self-
15 management of a patient’s health care while the patient is at the originating
16 site and the health care provider is at a distant site. Telehealth facilitates
17 patient self-management and caregiver support for patients and includes
18 synchronous interactions and asynchronous store and forward transfers.

19 “(b) Prior to the delivery of health care via telehealth, the health care provider
20 initiating the use of telehealth shall inform the patient about the use of telehealth and
21 obtain verbal or written consent from the patient for the use of telehealth as an
22 acceptable mode of delivering health care services and public health. The consent
23 shall be documented.

24 “(c) Nothing in this section shall preclude a patient from receiving in-person
25 health care delivery services during a specified course of health care and treatment
26 after agreeing to receive services via telehealth.

27 “(d) The failure of a health care provider to comply with this section shall
28 constitute unprofessional conduct. Section 2314 shall not apply to this section.

1 “(e) This section shall not be construed to alter the scope of practice of any
2 health care provider or authorize the delivery of health care services in a setting, or in
3 a manner, not otherwise authorized by law.

4 “(f) All laws regarding the confidentiality of health care information and a
5 patient’s rights to his or her medical information shall apply to telehealth interactions.

6 “(g) This section shall not apply to a patient under the jurisdiction of the
7 Department of Corrections and Rehabilitation or any other correctional facility.

8 “(h)(1) Notwithstanding any other provision of law and for purposes of this
9 section, the governing body of the hospital whose patients are receiving the telehealth
10 services may grant privileges to, and verify and approve credentials for, providers of
11 telehealth services based on its medical staff recommendations that rely on
12 information provided by the distant-site hospital or telehealth entity, as described in
13 Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

14 “...”

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Gross Negligence)**

17 10. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined
18 by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care
19 and treatment of patients K.S. and A.J.T. as more particularly alleged hereinafter:

20 **THE COMPASSIONATE HARVEST MEDICAL CLINIC OPERATION**

21 11. Respondent is and was the “Owner, Operator, Practitioner” and “Medical Director”
22 for the Compassionate Harvest Medical Clinic (Compassionate Harvest) from approximately
23 2010 to the present. In that capacity, respondent “[e]valuate[s] patients for medical marijuana
24 recommendations.” According to information on Compassionate Harvest’s website, “over
25 10,000 patients” have been evaluated for medical marijuana recommendations. Those seeking
26 medical marijuana recommendations from Compassionate Harvest can register online from the
27 website or they can contact Compassionate Harvest by e-mail or phone. Compassionate Harvest
28 is “typically able to book patients in just 24 hours [and] Walk-ins are also welcome.”

1 Compassionate Harvest patients can be seen in-person at any of its four locations in Hemet, Lake
2 Elsinore, Rancho Cucamonga or San Marcos, California; or patients can be seen by respondent
3 via "telemedicine" using Skype.² According to the information on Compassionate Harvest's
4 website, "Telemedicine is used by [Compassionate Harvest] to accommodate 'walk-in' patients
5 and individuals who wish to be evaluated immediately for a recommendation, even if a MD is not
6 not physically present." The Compassionate Harvest website informs potential patients, that if
7 they qualify for medical marijuana, they can get their recommendation "right away."³

8 12. In the "About Us" section of the Compassionate Harvest website, potential patients
9 are advised, among other things, that "[w]e provide the most comprehensive, medically
10 professional, and legally indisputable process of Medical Cannabis evaluation, verification, and
11 support possible" with potential patients being advised that "[w]e do not expect our patients to
12 'prove' their diagnosis with documentation." In the "Frequently Asked Questions" section of the
13 website, there is the following question and answer provided:

14 "Q. What do I need to bring into the office when I come in?

15 "A. All we need is some form of picture ID. We do not require any medical records.

16 If you happen to have something like an x-ray or prescription in regard to your illness
17 we appreciate you bringing those in, but it is not necessary."
18

19 The Compassionate Harvest website also contains a video in which respondent answers
20 particular questions for potential patients. In this video, respondent advises potential patients,
21 among other things, that "the side effect of cannabis is euphoria, you feel better" and answers the
22 question of "How do I get my recommendation?" In doing so, respondent advises his potential
23 patients "that it is a simple and easy process" to receive a medical marijuana recommendation.

24
25 ² Skype is a software application that enables conversations between the parties over the
internet with simultaneous viewing of the parties using with a web camera.

26 ³ The following questions and answers are in the "Frequently Asked Questions" section of
27 the website: "Q. What do I get? Do I get my recommendation right away? A. Yes, assuming that
28 you qualify, we will give you everything you need to legally carry, use and obtain your medication
from any California dispensary."

1 Potential patients are advised in the video that they can bring medical records if they like "but
2 they are not required" and offers the following explanation:

3 " . . . [We] believe our patients, we believe the medical history that they
4 provide us, so we can go basically on the history that the patient presents. You
5 know, if you're coming in because of insomnia and anxiety – who else but the
6 patient knows that they have insomnia or anxiety? So, just like any doctor we have
7 to believe our patients. I take them at their word. So when the patient comes in
8 we ask them to fill out a medical history form that provides the information that we
9 need to issue them a license [for medical marijuana]." (Italics added.)

10 In the video, respondent also answers the question of "how long does it take to get a
11 recommendation?" Respondent advises his potential patients that "this usually takes about ten
12 minutes" and "even quicker" if potential patients provide their medical history online. The
13 potential patients are further advised that after they get their recommendation "the patient is able
14 to go to any dispensary in California, buy and use whatever they wish of medical cannabis [and]
15 that they will be completely legal as a buyer and user of cannabis."

16 **PATIENT K.S. – UNDERCOVER PATIENT**

17 13. On or about May 15, 2016, an undercover visit was made to respondent's office by an
18 investigator posing as patient K.S., who was accompanied by another investigator. Patient K.S.
19 advised the receptionist that she had registered online and wanted to get a med-card
20 (recommendation). The receptionist advised patient K.S. that she would sign her up, all the
21 information would go to respondent and that she would be speaking to respondent on Skype. The
22 cost to obtain a recommendation was \$75.00. Patient K.S. was told "[i]t's gonna be really pretty
23 quick" and that "you should be able to use it [the recommendation] today." Among other things,
24 patient K.S. was asked by the receptionist whether she had "any major medical concerns?"
25 Patient K.S. replied "not really" and the receptionist responded "Okay. That's fine." Patient K.S.
26 was asked whether she was taking any medications and she replied "just birth control." Patient
27 K.S. was also asked whether she had ever been hospitalized, whether she had any breathing
28 concerns or heart problems, whether she smoked, whether she was unable to work because of a

1 medical injury, whether she was on parole or probation, whether she had been [convicted] of a
2 DUI [driving under the influence] and whether she was currently pregnant and she replied "no" to
3 all of the aforementioned questions. Patient K.S. was also asked whether she had "a history of
4 drug abuse?" and she replied "What do you mean by that?" The receptionist responded by asking
5 whether patient K.S. had ever been to rehab for serious drug problems and patient K.S. responded
6 "no." Patient K.S. was also asked whether she drank alcohol and she responded "occasionally."
7 After this information was obtained by the receptionist, patient K.S. was advised to have a seat
8 and that "You'll Skype with him [respondent]."

9 14. Respondent then appeared via Skype to do his so-called evaluation of patient K.S.
10 After a brief introduction, respondent advised patient K.S. that "it's a simple process. It only
11 takes us about 5 minutes." Respondent advised patient K.S. that "we have to document that you
12 have a therapeutic symptom or diagnosis [and] [t]hat there is a reason to use cannabis, that meets
13 the State's requirements." Respondent then asked "[s]o, I just need to know from you how
14 cannabis helps you? or what you want to use it for?" Patient K.S. responded that "it just helps me
15 relax, you know, after a long hard day" and that "it just helps take the edge off." Respondent
16 asked patient K.S. "do you use it to help you sleep at night?" and she responded "that's not the
17 reason." Respondent then prompted patient K.S. "so you might use it for insomnia?" and she
18 replied "I guess." As part of his discussion with patient K.S., respondent also asked "and so when
19 you say it takes the stress off, you mean it..." and patient K.S. replied it just helped her relax to
20 which respondent asked "are you talking about anxiety?" and patient K.S. replied "Well, you
21 know, just the business of running a family and running here to there everyday – all day everyday"
22 at which point respondent advised patient K.S. "I have to put a diagnosis in to qualify you. So, I
23 mean, I can put anxiety down, or intermittent insomnia or something like that. That – those
24 qualify you. If you're talking about stress and anxiety, I can qualify you – I can't just say it helps
25 you relax." Patient K.S. responded "[o]kay, well go ahead and put that then" and respondent
26 replied "Okay. So... 'stress and anxiety'... so I'm gonna put 'stress, anxiety,' and you know
27 'occasional insomnia.' Does that sound right?" Patient K.S. told respondent "Okay, sounds
28 good" and respondent informed her "Okay. Okay, that gets us to where we want to be then" and

1 issued a one year recommendation which "you'll be able to use right away today..." The entire
2 Skype evaluation with respondent took approximately four minutes.

3 15. During the course of the so-called evaluation, no vital signs were recorded; no prior
4 medical records were reviewed; there was no physical examination of patient K.S.; there was no
5 history taken and/or proper work-up or assessment related to patient K.S.'s alleged stress, anxiety
6 and/or insomnia; no differential diagnoses or other causes of the alleged symptoms were
7 considered; there was no detailed informed consent regarding the risks and benefits of cannabis;
8 there was no discussion of titration and alternate methods of ingestion; and there was no
9 discussion about follow up visits to evaluate the efficacy of the medical marijuana that was being
10 recommended.

11 16. Respondent's medical record for this visit indicates, among other things, that no vital
12 signs were obtained; the extremities, lymph, neuro and psych section indicates "Not evaluated[;]"
13 the discussion section of the record indicates "discussed titration and alternative methods of
14 ingestion (even though that was never discussed with patient K.S.) and that the risks and side
15 effect of cannabis were discussed (even though there was no such discussion); the diagnosis
16 section lists the diagnoses of Anxiety Disorder – [CPT Code] 300.00, Insomnia – [CPT Code]
17 780.52, and Stress Reaction – [CPT Code] 308.4; the social and family history indicates "not
18 answered" for cigarettes, alcohol, parole, probation, DUI and exercise (even though some of these
19 questions were asked by the receptionist) and the evaluation system indicates "not evaluated" as
20 to all the listed categories. There was no documentation to indicate that patient K.S. was seen by
21 Skype or via telemedicine.

22 17. Patient K.S. was provided with a "Physician Statement and Recommendation"
23 (recommendation) for medical marijuana. Among other things, the recommendation, that was
24 signed by respondent, indicated that patient K.S. "has been examined by the physician
25 [respondent] indicated on this document" that patient K.S. "qualifies...for the use of cannabis for
26 medical purposes" and that "[t]he physician has discussed the potential medical benefits and risks
27 of cannabis use."
28

1 18. Respondent committed gross negligence in his care and treatment of patient K.S. which
2 included, but was not limited to, the following:

3 (a) Respondent issued a medical marijuana recommendation to patient K.S.
4 without adequate medical indication or justification;

5 (b) Respondent failed to obtain and document an appropriate and thorough
6 medical history for patients K.S.;

7 (c) Respondent failed to conduct and document an appropriate physical
8 examination on patient K.S. and failed to investigate and exclude other possible
9 causes for her alleged symptoms and diagnoses. Among other things, respondent
10 failed to obtain and document vital signs; failed to examine the skin, eyes and/or
11 neurological system; and failed to examine the airway or neck of patient K.S. in
12 regard to her alleged insomnia;

13 (d) Respondent made no attempt to obtain prior medical records in order to
14 verify patient K.S.'s alleged medical conditions that were the bases for the medical
15 marijuana recommendation;

16 (e) Respondent failed to provide adequate informed consent to patient K.S.
17 pertaining to the use of medical marijuana;

18 (f) Respondent demonstrated a lack of knowledge regarding the potential
19 risks associated with cannabis;

20 (g) Respondent failed to schedule and/or provide for any periodic review or
21 assessment of the safety and efficacy of the medical marijuana recommendation he
22 recommended for patient K.S.;

23 (h) Respondent failed to maintain adequate and accurate records in regard
24 to the issuance of a medical marijuana recommendation to patients K.S. The
25 records, among other things, were inaccurate, fraudulent, contained intentional and
26 materially false representations and lacked adequate detail and specificity to justify
27 the issuance of a medical marijuana recommendation to patients K.S.; and
28

1 (i) Respondent failed to document that patient K.S. was seen by Skype or via
2 telemedicine.

3 **PATIENT A.J.T. – UNDERCOVER PATIENT**

4 19. On or about July 9, 2015, an undercover visit was made to respondent's office by an
5 investigator posing as patient A.J.T., who was accompanied by another investigator, seeking to
6 obtain a medical marijuana recommendation. The cost to obtain a recommendation was \$75.00.

7 After waiting awhile, patient A.J.T. was asked by the receptionist "what are you medically
8 diagnosed with?" and she replied "nothing" which prompted the receptionist to inquire "[d]o you
9 want to say like 'Anxiety' or something?" Patient A.J.T. replied "I need it for work" and the
10 receptionist responded "So, like stress?" Patient A.J.T. replied "I don't really have a reason" and
11 the receptionist told her "Oh? I'll just put stress. Just cause he's [respondent is] gonna ask
12 you..." At this point, patient A.J.T. then explained that she had a drug test with a new employer
13 coming up and she was afraid she would test positive after eating some brownies that a friend
14 made for her birthday on the 4th of July. The receptionist asked patient A.J.T. whether she had
15 any major medical concerns and/or whether she had "any alternate therapy or methods that she
16 use[d]? Patient A.J.T. asked "[f]or what?" and the receptionist replied "[f]or your like – well for
17 like anxiety and insomnia?" to which patient A.J.T. replied "no." The receptionist then asked
18 patient A.J.T., among other things, whether she had any allergies, whether she had ever been
19 hospitalized, whether she had any major surgeries, breathing concerns or heart problems, whether
20 she smoked, whether she had a history of drug abuse, whether she was unable to work because of
21 a medical injury, whether she was on parole or probation, whether she had been convicted of a
22 DUI, whether she was currently pregnant or breastfeeding and she replied "no" to all of the
23 aforementioned questions. When asked, patient A.J.T. told the receptionist she was employed
24 and that she occasionally drank alcohol.

25 20. After the discussion above, and prior to the Skype evaluation, the receptionist
26 explained to patient A.J.T. that "I have to speak to and explain to the doctor and everything like
27
28

1 anxiety and insomnia,⁴ so you kind of like go along with it..." Patient A.J.T. replied "Why don't
2 I just tell him the truth that I – I'm gonna get drug tested" and the receptionist then cautioned
3 patient A.J.T. "I don't think he's gonna give it [the recommendation] to you then..." and
4 "...because like – yeah, I'm just telling you right now, like honestly he's not gonna give it to you
5 if you don't like have a reason." After thinking about it, and some further discussion, patient
6 A.J.T. advised the receptionist that she was "gonna tell him my whole story" and the receptionist
7 replied "Yeah. Just tell him, and then see what he says..." At one point, the receptionist told
8 patient A.J.T. "we'll be honest..." and patient A.J.T. apologized with respondent replying "No,
9 you're fine. I don't want to get you to get in trouble, like I don't want to lie either..." However,
10 shortly thereafter, the receptionist prompted patient A.J.T. that if respondent "asks you like, oh
11 did you like smoke it or eat it [presumably referring to the cannabis that was in her system from
12 the 4th of July]" to say that she ingested the cannabis "cause you were in pain or something..." to
13 which patient A.J.T. replied "I wasn't feeling any pain that night." At another point during their
14 conversation, the receptionist again attempted to coach patient A.J.T. on what to say after she told
15 the receptionist "I'm just going to tell him the truth" with the receptionist noting "cause you said
16 'Work,' that sounds like stress" and patient A.J.T. said "no." After some discussion about how
17 long cannabis stays in a person's system, patient A.J.T. again reiterated that "I want to get a
18 recommendation because I have it [cannabis] in my system" with the receptionist again cautioning
19 patient A.J.T. that she might not get the recommendation if she were to tell the truth,⁵ i.e., that she
20 wanted the recommendation in case she came up positive for cannabis when tested by her
21 employer. Shortly thereafter, the receptionist set up the Skype evaluation with respondent.

22 21. After a brief introduction at the beginning of the first Skype appearance, the following
23 discussion took place between respondent and patient A.J.T.:

24 _____
25 ⁴ This was despite the fact that patient A.J.T. never claimed to having insomnia or anxiety
but, instead, that she needed the recommendation because of an upcoming drug test.

26 ⁵ Specifically, after patient A.J.T. indicated she was going to tell respondent she "want[ed]
27 to get the recommendation because I have it in my system" and the receptionist advised her "like,
28 I don't know, cause I feel like I think he won't – like you will not get it if it's not medical – like if
it's not legit. Like if you don't have stress – if you don't have anxiety..."

1 “[Patient A.J.T.]: Um, hi Dr. Kelly, my name’s [patient A.J.T.], and I had
2 a quick question before, um, your receptionist checked me in about a marijuana
3 recommendation.

4 “[Respondent]: Sure.

5 “[Patient A.J.T.]: I recently got a job at a company as a secretary, and
6 haven’t worked in a very long time. *And this past 4th of July I ate brownies that were*
7 *infused with marijuana. And next week I gonna be having a drug test. So, I wanted*
8 *to get a recommendation if they ask me what’s in my system, I can show that I have a*
9 *medical marijuana recommendation.* (Italics added.)

10 “[Respondent] *Right. Good idea and then you’re legal.* (Italics added.)

11 “[Patient A.J.T.]: Right. Exactly, so I don’t really think about all these
12 questions that she was asking me before. *I don’t really think I have any medical*
13 *history or anything. I just think – I just got a heads up from my friend who works at*
14 *this company, and she said that even if somebody’s on prescription drugs, they have*
15 *to have a prescription for it. So since I ingested it, and if I wanted to have it...I want*
16 *it legally, I just wanted to get a recommendation from you.* (Italics added.)

17 “[Respondent]: *Yeah, well I can definitely do that for you.* I mean – I
18 mean we can do [sic] on the basis of insomnia or any condition like that, anxiety or
19 insomnia. If you have any kind of problems sleeping, we can probably give you a
20 recommendation. It’s totally confidential. Uh, but the standard protocol is, you
21 know, if it shows up in your test and you show them your license, tell them that
22 you’re using it legally, under a doctor’s recommendation. (Italics added.)

23 “...

24 “[Patient A.J.T.]: *I wanted to be perfectly honest, though with you, and*
25 *say that I don’t really have any issues, but – what – I don’t know, I don’t know how*
26 *this works, uh.* (Italics added.)

27 “[Respondent]: *I go on what’s written on your intake form, so if you fill*
28 *out the intake form, and it says ‘Anxiety,’ or it says ‘Insomnia,’ or something like*

1 *that, then you know, we believe our patients.* So you know what is – its what you put
2 – what you put down in writing that counts. (*Italics added.*)

3 “[Patient A.J.T.]: Okay, then.

4 “[Respondent]: Okay?

5 “[Patient A.J.T.]: Okay, then.

6 “[Respondent]: So I appreciate you being honest and visiting – you know,
7 I’ll leave it to you to fill out the intake form and we’ll go – you know, we’ll go from
8 there, okay?

9 “[Patient A.J.T.]: Okay, thank you so much.”

10 22. After being advised of the “standard protocol” by respondent, and having been
11 coached on what to put on the intake form in order to receive a medical marijuana
12 recommendation, the intake form was completed, with the assistance of the receptionist, and a
13 second Skype call was arranged between patient A.J.T. and respondent. Respondent indicated
14 “I’m back” and “let me pull your file, okay?” The “Diagnosis” section of the Intake Note for July
15 9, 2015, indicated patient A.J.T.’s diagnoses were “Stress Reaction - [CPT Code] 308.4,”
16 “Insomnia – [CPT Code] 780.52” and “Anxiety Disorder – [CPT Code] 300.00.”⁶ After a brief
17 discussion about A.J.T.’s employment, she was advised “...well listen, stress reaction is one of
18 the diagnoses that’s valid for using cannabis so, uh, who doesn’t experience light stress? So...
19 stress, anxiety and insomnia are perfectly good reasons to do this for you. So we do it for a year,
20 as long as we can, and you’ll be able to use it right away today, okay?” After answering a brief
21 call, respondent finished up his session with patient A.J.T. In doing so, the following exchange
22 took place:

23 “[Respondent]: Okay, so just give me a minute here to complete your
24 chart. So I’m putting ‘stress reaction, insomnia and anxiety’ down. Sound right?

25 “[Patient A.J.T.]: Mm-Hmm. Yeah, that sounds good.

26 “[Respondent]: Okay.

27

28 ⁶ The “Diagnosis” section also listed “Other” which listed stress, anxiety and insomnia.

1 “[Patient A.J.T.]: Whatever you need to do to make me legal. Ha, ha.

2 “[Respondent]: Uh, who doesn’t suffer from anxiety and stress?

3 “...”

4 “[Respondent]: Okay, so I’m gonna go ahead then and sign your file and
5 get you legal. This will be good for the year, and you will be able to use it the minute
6 you walk out the door.”

7 Before finishing up the Skype session, respondent told patient A.J.T. “and as I said, I am
8 willing to write letters for patients. If you, uh, do run into a problem and you need a letter, just
9 come in and let me know...” The entire two Skype evaluations with respondent took a total of
10 four minutes and forty-five seconds.⁷

11 23. During the course of the so-called evaluation, no vital signs were recorded; no prior
12 medical records were reviewed; there was no physical examination of patient A.J.T.; there was no
13 history taken and/or proper work-up or assessment related to patient A.J.T.’s alleged stress,
14 anxiety and/or insomnia and, in truth and fact, she had stated to respondent that she had no
15 ailments and instead needed the recommendation because she was concerned about testing
16 positive on an upcoming drug test; no differential diagnoses or other causes of the alleged
17 symptoms were considered; there was no detailed informed consent regarding the risks and
18 benefits of cannabis; there was no discussion of titration and alternate methods of ingestion; and
19 there was no discussion about follow up visits to evaluate the efficacy of the medical marijuana
20 that was being recommended

21 24. Respondent’s medical record for this visit indicates, among other things, that no vital
22 signs were obtained; the extremities, lymph, neuro and psych section indicates “Not evaluated[;]”
23 the discussion section of the record indicates “discussed titration and alternative methods of
24 ingestion (even though that was never discussed with patient A.J.T.) and that the risks and side
25 effect of cannabis were discussed (even though there was no such discussion); the diagnosis

26
27 ⁷ The first session took two minutes and forty-five seconds (2:45 minutes) while the
28 second session took two minutes (2:00 minutes) not including a short break by respondent to
 respond to another call.

1 section lists the diagnoses of Stress Reaction – [CPT Code] 308.4, Insomnia – [CPT Code]
2 780.52 and Anxiety Disorder – [CPT Code] 300.00, and the social and family history indicates
3 “not answered” for cigarettes, alcohol, parole, probation, DUI and exercise (even though some of
4 these questions were asked by the receptionist) and the evaluation section indicates “not
5 evaluated” as to all the listed categories. There was no documentation to indicate that patient
6 A.J.T. was seen by Skype or via telemedicine.

7 25. Patient A.J.T. was provided with a “Physician Statement and Recommendation”
8 (recommendation) for medical marijuana. Among other things, the recommendation, that was
9 signed by respondent, indicated that patient A.J.T. “has been examined by the physician
10 [respondent] indicated on this document” that patient A.J.T. “qualifies...for the use of cannabis
11 for medical purposes” and that “[t]he physician has discussed the potential medical benefits and
12 risks of cannabis use.”

13 26. On or about September 4, 2015, respondent wrote a letter for patient A.J.T. that was
14 directed to the Genesis Corporation which provided, in pertinent part:

15 “Dear Genesis Corporation,

16 “Ms. [A.J.T.] has issued a recommendation to use medical Cannabis legally at night
17 for insomnia/anxiety disorder under Ca Prop 215. She has given permission to
18 release her medical information. Diagnoses are stated below:

18 “ICD9 code: Anxiety Disorder – 300.00

19 “ICD9 code: Insomnia – 780.52

19 “ICD9 code: Stress Reaction – 308.4

20 “Treatment Plan: To incorporate medical cannabis into the patient’s current treatment
21 protocol from their PTP [t]o continue care with current treating providers. Patient
22 will pursue further evaluation and treatment as indicated for current symptoms.

22 “Ms. [A.J.T.] uses medical Cannabis appropriately under my supervision. If you have
23 any questions or concerns, please feel free to contact me.

23 “Sincerely,

24 [Signature]

25 “Dr. Wayne Kelly, M.D.

26 License # C43073

27 Phone # [Omitted]

27 Fax # [Omitted]”
28

1 27. Respondent committed gross negligence in his care and treatment of patient A.J.T. which
2 included, but was not limited to, the following:

3 (a) Respondent issued a medical marijuana recommendation to patient
4 A.J.T. without adequate medical indication or justification;

5 (b) Respondent failed to obtain and document an appropriate and thorough
6 medical history for patients A.J.T.;

7 (c) Respondent failed to conduct and document an appropriate physical
8 examination on patient A.J.T. and failed to investigate and exclude other possible
9 causes for her alleged symptoms and diagnoses. Among other things, respondent
10 failed to obtain and document vital signs; failed to examine the skin, eyes and/or
11 neurological system; and failed to examine the airway or neck of patient A.J.T. in
12 regard to her alleged insomnia diagnosis;

13 (d) Respondent made no attempt to obtain prior medical records in order to
14 verify patient A.J.T.'s alleged medical conditions that were the bases for the
15 medical marijuana recommendation;

16 (e) Respondent failed to provide adequate informed consent to patient
17 A.J.T. pertaining to the use of medical marijuana;

18 (f) Respondent demonstrated a lack of knowledge regarding the potential
19 risks associated with cannabis;

20 (g) Respondent failed to schedule and/or provide for any periodic review or
21 assessment of the safety and efficacy of the medical marijuana he recommended
22 for patient A.J.T.;

23 (h) Respondent failed to maintain adequate and accurate records in regard
24 to the issuance of a medical marijuana recommendation to patient A.J.T. The
25 records, among other things, were inaccurate, fraudulent, contained intentional and
26 materially false representations and lacked adequate detail and specificity to justify
27 the issuance of a medical marijuana recommendation to patients A.J.T.; and
28

////

1 (i) Respondent failed to document that patient A.J.T. was seen by Skype or
2 via telemedicine.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Repeated Negligent Acts)**

5 28. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
6 defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in
7 her care and treatment of patients K.S. and A.J.T., as more particularly alleged in paragraphs 10
8 through 27, above, which are hereby incorporated by reference and realleged as if fully set forth
9 herein. The repeated negligent acts included, but were not limited to the following:

10 **PATIENT K.S.**

11 (a) Respondent issued a medical marijuana recommendation to patient K.S.
12 without adequate medical indication or justification;

13 (b) Respondent failed to obtain and document an appropriate and thorough
14 medical history for patients K.S.;

15 (c) Respondent failed to conduct and document an appropriate physical
16 examination on patient K.S. and failed to investigate and exclude other possible
17 causes for her alleged symptoms and diagnoses. Among other things, respondent
18 failed to obtain and document vital signs; failed to examine the skin, eyes and/or
19 neurological system; and failed to examine the airway or neck of patient K.S. in
20 regard to her complaints of insomnia;

21 (d) Respondent made no attempt to obtain prior medical records in order to
22 verify patient K.S.'s alleged medical conditions that were the bases for the medical
23 marijuana recommendation;

24 (e) Respondent failed to provide adequate informed consent to patient K.S.
25 pertaining to the use of medical marijuana;

26 (f) Respondent demonstrated a lack of knowledge regarding the potential
27 risks associated with cannabis;

28 ////

1 (g) Respondent failed to schedule and/or provide for any periodic review or
2 assessment of the safety and efficacy of the medical marijuana he recommended
3 for patient K.S.;

4 (h) Respondent failed to maintain adequate and accurate records in regard
5 to the issuance of a medical marijuana recommendation to patients K.S. The
6 records, among other things, were inaccurate, fraudulent, contained intentional and
7 materially false representations and lacked adequate detail and specificity to justify
8 the issuance of a medical marijuana recommendation to patients K.S.; and

9 (i) Respondent failed to document that patient K.S. was seen by Skype or
10 via telemedicine.

11 **PATIENT A.J.T.**

12 (a) Respondent issued a medical marijuana recommendation to patient
13 A.J.T. without adequate medical indication or justification;

14 (b) Respondent failed to obtain and document an appropriate and thorough
15 medical history for patients A.J.T.;

16 (c) Respondent failed to conduct and document an appropriate physical
17 examination on patient A.J.T. and failed to investigate and exclude other possible
18 causes for her alleged symptoms and diagnoses. Among other things, respondent
19 failed to obtain and document vital signs; failed to examine the skin, eyes and/or
20 neurological system; and failed to examine the airway or neck of patient A.J.T. in
21 regard to her alleged insomnia diagnosis;

22 (d) Respondent made no attempt to obtain prior medical records in order to
23 verify patient A.J.T.'s alleged medical conditions that were the bases for the
24 medical marijuana recommendation;

25 (e) Respondent failed to provide adequate informed consent to patient
26 A.J.T. pertaining to the use of medical marijuana;

27 (f) Respondent demonstrated a lack of knowledge regarding the potential
28 risks associated with cannabis;

1 (g) Respondent failed to schedule and/or provide for any periodic review or
2 assessment of the safety and efficacy of the medical marijuana he recommended
3 for patient A.J.T.;

4 (h) Respondent failed to maintain adequate and accurate records in regard
5 to the issuance of a medical marijuana recommendation to patients A.J.T. The
6 records, among other things, were inaccurate, fraudulent, contained intentional and
7 materially false representations and lacked adequate detail and specificity to justify
8 the issuance of a medical marijuana recommendation to patients A.J.T.; and

9 (i) Respondent failed to document that patient A.J.T. was seen by Skype or
10 via telemedicine.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Incompetence)**

13 29. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
14 defined by section 2234, subdivision (d), of the Code, in that he has demonstrated incompetence in
15 the care and treatment of patients K.S. and A.J.T., as more particularly alleged hereinafter:

16 (a) Paragraphs 10 through 27, above, are hereby incorporated by reference and
17 realleged as if fully set forth herein;

18 (b) Respondent exhibited a lack of knowledge in regard to the potentially serious
19 adverse effects associated with medical marijuana.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(False Representations)**

22 30. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
23 defined by section 2261, of the Code, in that he made and/or signed documents related to the
24 practice of medicine that falsely represented the existence or nonexistence of facts related to his
25 care and treatment of patients K.S. and A.J.T., as more particularly alleged hereinafter:

26 (a) Paragraphs 10 through 27, above, are hereby incorporated by reference
27 and realleged as if fully set forth herein;

28 ////

1 (b) Respondent knowingly made and/or signed documents related to the
2 practice of medicine that falsely represented the existence or nonexistence of facts
3 when he, among other things, (1) executed the Physician Statement and
4 Recommendations for patients K.S. and A.J.T. attesting that both patients qualified
5 for the use of medical marijuana when, in truth and fact, they did not; (2)
6 documented the diagnoses of stress reaction, insomnia and/or anxiety in order to
7 justify the medical marijuana recommendations when, in truth and fact, there was
8 no legitimate bases for the diagnoses; (3) documented that he had discussed titration
9 and alternative methods of ingestion and the risks and side effects of cannabis with
10 patients K.S. and A.J.T. when, in truth and fact, he did not; and (4) when he drafted
11 and executed correspondence for patient A.J.T. addressed to Genesis Corporation
12 dated September 4, 2015, setting forth that patient A.J.T. had legitimate diagnoses
13 that legally qualified her for medical marijuana when, in truth and fact, she had
14 informed respondent she had no such medical conditions and, instead, needed a
15 medical marijuana recommendation as legal justification in case she were to test
16 positive on any drug tests conducted by her employer.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 **(Dishonesty or Corruption)**

19 31. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
20 defined by section 2234, subdivision (e), of the Code, in that he has engaged in an act or acts of
21 dishonesty or corruption substantially related to the qualifications, functions, or duties of a physician,
22 as more particularly alleged in paragraphs 10 through 30, above, which are hereby incorporated by
23 reference and realleged as if fully set forth herein.

24 **SIXTH CAUSE FOR DISCIPLINE**

25 **(Failure to Maintain Adequate or Accurate Records)**

26 32. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
27 defined by section 2266, of the Code, in that she failed to maintain adequate and accurate records
28 in his care and treatment of patients K.S. and A.J.T., as more particularly alleged in paragraphs 10

1 through 30, above, which are hereby incorporated by reference and realleged as if fully set forth
2 herein.

3 **SEVENTH CAUSE FOR DISCIPLINE**

4 **(General Unprofessional Conduct)**

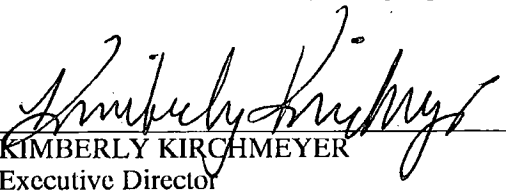
5 33. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
6 defined by section 2234, of the Code, in that he has engaged in conduct which breached the rules
7 or ethical code of the medical profession or which was unbecoming a member in good standing of
8 the medical profession, and which demonstrates an unfitness to practice medicine, as more
9 particularly alleged in paragraphs 10 through 32, above, are hereby incorporated by reference and
10 realleged as if fully set forth herein.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Medical Board of California issue a decision:

- 14 1. Revoking or suspending Physician's and Surgeon's Certificate Number C43073,
15 issued to respondent Wayne Kelly, M.D.;
- 16 2. Revoking, suspending or denying approval of respondent Wayne Kelly, M.D.'s
17 authority to supervise physician assistants, pursuant to section 3527 of the Code;
- 18 3. Ordering respondent Wayne Kelly, M.D., if placed on probation, to pay the Board the
19 costs of probation monitoring; and
- 20 4. Taking such other and further action as deemed necessary and proper.

21
22 DATED: November 7, 2016


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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